

1 IN THE UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

5	GREGORY CASH AND CLARA CASH	:
	AND GREGORY B. WAHOFF AND	:
6	PHILLIP GARCIA AND ROCKY	:
	WAYNE ADKISSON,	:
7	Plaintiffs,	:
	-vs-	:
8	HAMILTON COUNTY DEPARTMENT	:
	OF ADULT PROBATION AND	:
9	MICHAEL WALTON AND CITY OF	:
	CINCINNATI,	:
10	Defendants.	:

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18 Not Applicable

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1 APPEARANCES :

2 | ON BEHALF OF PLAINTIFFS

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ON BEHALF OF DEFENDANTS

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11 Attorney at Law
12 Assistant Prosecuting Attorney
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ALSO PRESENT

Ms. Amy Diers

* * * * *

1 WHEREUPON:

2 JEFFREY A. SMITH,

3 of lawful age, a witness herein, being first duly
4 sworn as hereinafter certified, testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. GANULIN:

8 Q. Good morning, Mr. Smith. Please state
9 your full name and address.

10 A. Jeffery A. Smith, 800 Broadway,
11 Cincinnati, Ohio, 45202.

12 Q. And you previously gave deposition
13 testimony in this case; is that correct?

14 A. Yes, sir.

15 Q. You were formerly employed as a field
16 supervisor for the Hamilton County Adult Probation
17 Department; is that correct?

18 A. Yes, sir. I still am.

19 Q. You're still employed in that capacity?

20 A. Yes, sir.

21 Q. Would you describe -- and when did you
22 assume those responsibilities, about?

23 A. 13, 14, 15 years ago. I don't know the
24 exact date. I was part-time at the time.

25 Q. And you have managerial

1 responsibilities to oversee probationers?

2 A. Yes, sir, I do.

3 Q. First of all, what's a probationer?

4 A. A probationer is a person directed by
5 the Court to do community service that goes out on
6 detail.

7 Q. And are your responsibilities to
8 oversee the probationers doing their work?

9 A. To oversee the probationers, see that
10 they do their job responsibly, and to maintain a
11 good working order with the probationers and
12 hopefully no one will get hurt.

13 Q. Are you on a job site with them?

14 A. Yes.

15 Q. You make sure they do their job?

16 A. Yes, as directed.

17 Q. Who do you report to in the
18 organization?

19 A. Mr. Rajagopal, director of community
20 service.

21 Q. Spell that for the reporter.

22 A. R-A-J.

23 MR. STEVENSON: He's going to be
24 here. His first in his P-A-K-K-I-R-I, and last
25 name R-A-J-A-G-O-P-A-L.

1 BY MR. GANULIN:

2 Q. And do you know who he reports to?

3 A. The assistant chief of the department.

4 Q. And that's the Hamilton County Adult
5 Probation Department?

6 A. Yes.

7 Q. And that person reports to the chief, I
8 assume?

9 A. I assume also.

10 Q. And do you know who the chief of the
11 Probation Department reports to?

12 A. I have no clue. I don't know. My
13 assumption would be the judges who govern our body,
14 our division.

15 Q. Perhaps the Hamilton County
16 administrator?

17 MR. STEVENSON: Rick --

18 THE WITNESS: I don't know.

19 MR. FELSON: That's a good enough
20 answer, if he doesn't know.

21 MR. GANULIN: That's fine. We'll
22 clear that up.

23 BY MR. GANULIN:

24 Q. I assume each department within the
25 Hamilton County government is managed by the

1 administrator of Hamilton County; do you know?

2 A. I don't know.

3 Q. If you don't know, that's fine.

4 A. I don't know.

5 Q. Now, you previously testified, if you
6 remember, that you were at the site of a cleanup in
7 October of 2001 underneath the Fifth Street viaduct
8 west of Central Avenue. Do you remember being at
9 that site in October of 2001?

10 A. I remember the site, but I don't
11 remember the exact date.

12 Q. But you remember being there because
13 you brought a group of probationers there to do a
14 cleanup?

15 A. Yes.

16 Q. Do you remember who directed you to
17 bring the probationers to that site?

18 A. No, I do not.

19 Q. Do you remember your testimony when you
20 were deposed in February of 2002 concerning that
21 issue?

22 A. No, I do not remember what I said.

23 Q. And today you don't remember who
24 directed you to bring the probationers to that
25 site?

1 A. No, I do not.

2 Q. That site was underneath an interstate
3 highway; is that correct?

4 A. Yes.

5 Q. Do you know if that was State of Ohio
6 property?

7 A. I do not.

8 Q. You do not know?

9 A. I do not know.

10 Q. Do you remember approximately how often
11 you were directed to bring probationers to sites
12 for cleanup activities?

13 A. Honestly, no. Not very often, not many
14 times at all.

15 Q. That was the only time, in fact, in
16 2001, is that correct, that you were directed to
17 bring --

18 A. It could be. I don't remember.

19 Q. In 2001 you had been on the job for
20 perhaps about ten years?

21 A. Ten years, I believe.

22 Q. Roughly how many times during those ten
23 years, more or less, were you directed to bring
24 probationers to sites?

25 A. Several times. I don't remember the

1 exact number.

2 MR. FELSON: I'm going to object
3 or ask for clarification. When you say sites, all
4 sites? Homeless sites? City sites? County sites?

5 MR. GANULIN: Any site within the
6 City of Cincinnati, whether it was State of Ohio
7 property or City of Cincinnati property or any
8 other property. How many times were you --

9 THE WITNESS: I don't remember the
10 exact number, but several over the years.

11 BY MR. GANULIN:

12 Q. Just so we're clear, over a period of
13 about ten years, several times?

14 A. Yes.

15 Q. Do you recall if you were ever
16 contacted directly by any City of Cincinnati
17 employee to bring probationers to a site?

18 A. Not that I'm aware of.

19 Q. Your testimony today is that you don't
20 recall ever being contacted by a City of Cincinnati
21 employee directly to bring probationers --

22 A. No, sir.

23 Q. And so as far as you recall, would you
24 have been directed by one of your superiors of the
25 organization where you needed to be on a certain

1 day?

2 A. Yes.

3 Q. That's the normal -- today for
4 instance, if you need to bring a group of
5 probationers to a site, would you be directed by
6 one of your superiors in the organization to bring
7 those probationers to that site?

8 A. Yes, Raj, yes.

9 Q. And although you don't remember
10 specifically you said, in October of 2001, it's
11 likely that if you were directed to bring
12 probationers to a site, it would have been by a
13 superior in your organization?

14 A. As far as I -- yes.

15 Q. To the extent you may have testified in
16 your earlier deposition that you assumed or knew
17 that a Cincinnati Policeman contacted to you to
18 bring probationers to that site -- strike all that.

19 In October of 2001 when you
20 brought the probationers to the site, when you
21 brought the probationer to the site underneath the
22 Fifth Street viaduct west of Central Avenue, did
23 you go down to the site to manage their work?

24 A. I took the probationers to the site and
25 then the policeman directed them what to do.

1 Q. Were you there when the -- which
2 policeman was that?

3 A. I believe it was Branigan.

4 Q. Do you remember if he was there when
5 you arrived or did he arrive after you?

6 A. I believe we followed him to different
7 sites, Officer Branigan.

8 Q. On that day?

9 A. I believe so. I don't remember sitting
10 here talking about it now in the deposition, but I
11 don't remember if we went to other sites or not,
12 but we were under the policeman's directive.

13 Q. That's my question. You spoke to him
14 when you arrived at the site? Do you remember?

15 A. No, I do not.

16 Q. When you say he directed the
17 probationers, were you there to hear him direct the
18 probationers?

19 A. I don't remember. I do not remember.

20 Q. I'm just trying to determine the basis
21 for your assertion before that the probationers
22 were directed by a Cincinnati policeman, in this
23 case you're saying Police Officer Branigan --

24 A. I believe it was Branigan. I wouldn't
25 swear to it.

1 Q. How do you know that he directed them
2 if you weren't there to hear him direct?

3 MR. FELSON: Objection. He said
4 he can't remember if he was there to hear him, not
5 that he wasn't there.

6 MR. STEVENSON: Go ahead and
7 answer, if you can.

8 THE WITNESS: What was the
9 question again?

10 BY MR. GANULIN:

11 Q. How do you know that Policeman Branigan
12 directed the probationers, if you were not there to
13 hear him direct?

14 A. Because I told the probationers do
15 whatever the police officer tells them to do.

16 Q. How far away from the cleanup site were
17 you that day?

18 A. I was obviously right there with the
19 probationers at the scene, at the site.

20 Q. You weren't sitting in a vehicle
21 removed from the site?

22 A. No, no, I was on the site.

23 Q. Were you standing there on the site
24 with the probationers?

25 A. I probably was sitting in the van

1 watching them.

2 Q. So was the van --

3 A. On the site, the vehicle was on the
4 site of the cleanup.

5 Q. And did you observe the probationers
6 working?

7 A. Yes.

8 Q. Do you remember seeing anything that
9 was not trash at the site?

10 A. No, sir.

11 Q. So, as far as you were aware, when you
12 were there at the time, the probationers were just
13 cleaning up a site filled with trash?

14 A. Correct.

15 Q. Assuming there was something of value
16 at the site, I don't know what in your experience
17 you ran across that might have value at a site like
18 that, but let's say there was a tent pitched at the
19 site, would you save a tent that was at the site or
20 would you throw it away?

21 A. Personally would I throw it away? No.

22 Q. Would you make sure your probationers
23 did not throw it away?

24 A. I couldn't tell you if they did or
25 didn't. I cannot remember.

1 MR. STEVENSON: Jeff, listen to
2 the question that's being asked.

3 | BY MR. GANULIN:

4 Q. At this point generally in fulfilling
5 your responsibilities to manage a group of
6 probationers cleaning up any site, if you were
7 there and saw an object of value --

8 A. No, I would not have them throw it
9 away, no.

10 Q. Did you ever have any conversations
11 with any city official from a City Council member
12 from the City Manager on down through all the city
13 employees, did you have any conversation with any
14 city official or employee about how your
15 probationers clean up sites?

16 A. Not that I remember, no.

17 Q. Are you aware of any city ordinance or
18 other city policy, City of Cincinnati ordinance or
19 policy or any other rule or regulation of the City
20 of Cincinnati procedure that controls the cleanup
21 of sites like this?

A. No, I am not.

23 Q. Are you aware of any occasions in the
24 context of your fulfilling your responsibilities
25 where, and I'm speaking about prior to October of

1 2001, any occasions where people had complained
2 about objects of value being thrown away when your
3 probationers cleaned up sites?

4 A. No, I am not.

5 Q. You previously testified that before a
6 cleanup of one of these sites occurred, that
7 Cincinnati policemen would give notice to people
8 present at the site and give them an opportunity to
9 remove whatever they wanted to; is that correct?

10 A. If that's what I stated, I'm sure it
11 was. I don't remember at this time.

12 Q. You don't remember whether anybody in
13 the employ of the State of Ohio from the Ohio
14 Department of Transportation or any other
15 department or division of the State of Ohio
16 communicated with Hamilton County to arrange for
17 the cleanup of this particular site that we're
18 discussing today which is underneath the Fifth
19 Street viaduct west of Central?

20 A. No, sir, I would not.

21 Q. You're aware, I believe, that Hamilton
22 County had a contract with the State of Ohio to
23 clean up the State of Ohio property and Hamilton
24 County had a separate contract with the City of
25 Cincinnati to clean up City of Cincinnati property;

1 is that correct?

2 A. I know they had some contracts
3 fulfilling those two organizations or working with
4 the two organizations.

5 MR. GANULIN: That's all I have.

6 CROSS EXAMINATION

7 BY MR. FELSON:

8 Q. Mr. Smith, I'm Steve Felson for the
9 Plaintiffs. A few extra questions here. You
10 mentioned that you were called several times in the
11 course of your service here doing these cleanup
12 sweeps. Are those the words you used, correct?

13 A. I don't remember the exact words I
14 used, but we have done it several times to help.

15 Q. Okay. Are you -- were any of the
16 sweeps that you -- we've defined homeless sweeps in
17 this litigation because homeless -- the people who
18 are Plaintiffs in this case were sleeping under
19 some of these -- on some of these sites, as you may
20 recall that from talking to your attorney or from
21 your prior knowledge. We define homeless sweeps as
22 cleanup operations in places where homeless people
23 are spending the night. Just so when I use that
24 term, that's what we're talking about. Okay?

25 A. Okay.

1 Q. Now, do you recall knowing that there
2 were homeless people sleeping in some of these
3 sites, correct?

4 A. I --

5 Q. Put it this way, have you ever run into
6 sites in the City of Cincinnati where homeless
7 people were sleeping?

8 A. Yes.

9 Q. You've actually seen that; haven't you?

10 A. On occasion.

11 Q. Okay. Have you ever brought
12 probationers to clean up sites where -- to clean up
13 homeless sites as I've defined it?

14 A. Individually by myself?

15 Q. Yeah.

16 A. Without the --

17 Q. No, no. Have you ever participated in
18 any cleanup of homeless sites? That's my question.
19 Is that ambiguous?

20 MR. STEVENSON: No, I want to make
21 sure he understands what you're driving at, but I
22 think that last question should do it. If you can
23 read that back.

24 (The requested portion was read
25 back.)

THE WITNESS: Yes.

2 BY MR. FELSON:

3 Q. And I'm saying this because the word
4 sites was used earlier by Mr. Ganulin and I asked
5 him to clarify that, but he stuck with the word
6 sites and I'm interested in sweeps of homeless
7 sites, and you have participated in that and there
8 was testimony of course before, a few years ago?

9 MR. GANULIN: Objection. He
10 didn't say he participated in homeless sweeps,
11 which is the word you used.

12 MR. FELSON: Cleanup operation of
13 homeless sites, so we don't mess anything up here.

14 MR. GANULIN: I'll make the same
15 objection. He didn't say participated in
16 operations. He said he saw a site, a homeless
17 site.

18 MR. FELSON: Let's go off the
19 record.

20 (Off the record discussion.)

21 BY MR. FELSON:

22 Q. Now, I'm going to ask, just to help me,
23 you mentioned the word sweep as possibly having
24 some other meaning or did I get that right?

A. I never mentioned sweep. You did.

1 Q. Does a sweep have any special meaning
2 in your job?

3 A. None whatsoever.

4 Q. Okay. Now, I understand you've already
5 testified that you had no particular recollection
6 of October this or that and so on and what happened
7 in a particular cleanup?

8 MR. STEVENSON: Jeff, I'm going to
9 caution you again.

10 THE WITNESS: You're correct.

11 BY MR. FELSON:

12 Q. I'll go to the end of the question.
13 And you gave some general answer, but specific
14 recollection of something that happened all these
15 years ago, I understand that you didn't have that.

16 Do you recall whether these
17 cleanups would be instigated by -- ever instigated
18 by a call from the Cincinnati police?

19 MR. GANULIN: Object to the
20 question, but go ahead and answer it if you can.

21 THE WITNESS: I don't know.

22 BY MR. FELSON:

23 Q. All right. That's an answer. The term
24 community service is used around here on occasion.
25 What does that mean?

1 A. The Court order's a probationer to do
2 community service usually instead of incarceration
3 as part of their punishment.

4 Q. Do I have it correct that generally you
5 would be bringing over probationers who are doing
6 court-ordered community service?

7 A. Uh-huh.

8 MR. STEVENSON: Yes or no?

9 THE WITNESS: Yes.

10 BY MR. FELSON:

11 Q. You mentioned that you recall, at least
12 on occasion, being in the van while this cleanup
13 was taking place, correct?

14 A. Correct.

15 Q. And you also mentioned the vehicle was
16 on the site?

17 A. Correct.

18 Q. Does that mean you would pull up over
19 the curb?

20 A. No, sir, you're on the roadway.

21 Q. On the roadway?

22 A. Yes, sir.

23 Q. When you said on the side, you just
24 meant close by?

25 A. Within -- able to supervise the

1 probationers and visually see them.

2 Q. Visual contact you would have?

3 A. Yes.

4 Q. And close enough that if a question
5 came up, you would be there?

6 A. Oh, absolutely.

7 Q. Now, you also mentioned that you would
8 instruct the probationers to do what the officer
9 said?

10 A. Yes.

11 Q. So presumably an officer would, for the
12 most part of your recollection, would be around
13 also?

14 A. They would be there, yes.

15 Q. And the officer would have his own
16 vehicle; is that correct? Ordinarily?

17 A. Yes.

18 Q. In your experience, if you recall,
19 would the officer stay in his vehicle or would he
20 be up closer to the probationers, if you have any
21 recollection?

22 A. I don't remember.

23 Q. Might be one might be true? You don't
24 have a recollection?

25 A. It could be, yes. I have no

1 recollection.

2 Q. Have you ever -- do you recall any
3 conversation you ever had with any probationer
4 about cleanup operations -- I wouldn't use that
5 word -- about the cleanup of these sites?

6 A. No, sir.

7 Q. And do you recall speaking with any
8 county personnel back in the office about cleanup
9 of sites and how it works?

10 A. No, sir.

11 Q. What I'm hearing is these are very
12 routine operations, they don't excite a lot of
13 conversation?

14 MR. GANULIN: Object to the
15 question, but if you understand it.

16 MR. STEVENSON: If you understand
17 it, go ahead and answer.

18 THE WITNESS: If we were directed
19 to go there, we went there, we went to the site.

20 BY MR. FELSON:

21 Q. You don't recall these cleanups raising
22 any questions that you had to ask somebody about?

23 A. No, sir, I don't remember.

24 Q. Okay. Would the same be true regarding
25 city personnel? Let's say these police officers,

1 did you ever discuss with any police officer how
2 you clean up or problems that arose or anything of
3 that nature?

4 A. No, sir, not that I'm aware of.

5 Q. Okay. I'm going to ask -- I'm going to
6 show you a couple of exhibits I have here, just so
7 I can understand some of these, and we'll see if
8 this is something you can help me with.

9 Plaintiff's Exhibit 1 I'm going to
10 hand to you, and I've got a copy. Of course the
11 attorneys have these from elsewhere, and I'll
12 represent that I received these from the attorney
13 for Hamilton County.

14 I just want to know what this is,
15 who fills it out, if you can just tell me in
16 general. There are probably two parts to it.
17 Community service roster, is that what you call
18 this first page? There are six, seven, maybe it's
19 all the same, I'm sorry, 13 pages actually which
20 look like the same form. Is that what you have
21 there?

22 A. Yes, sir, it is.

23 Q. And the community service roster, what
24 is this used for, this roster, if you know?

25 A. The roster of the probationers that are

1 to report for community service.

2 Q. Do you see these in the course of your
3 duties?

4 A. Most of the time I do not.

5 Q. You don't see these.

6 A. I would be search -- at this time when
7 this was taking place, I was searching the
8 probationers in the morning. They go through the
9 x-ray machine so they are not carrying anything
10 illegal and they empty their pockets out.

11 Q. Who would generate this report?

12 A. At the time, I don't know who would
13 have been doing it.

14 Q. So you would rarely, if ever, see this?

15 A. Seldom.

16 Q. What would be the occasion when you
17 would see it?

18 A. I can't think of any honestly. You
19 take your assignment and if you had a problem, you
20 report it back to the boss and check on the
21 paperwork. I seldom looked at these.

22 Q. You knew they were around?

23 A. I knew they were around, but I seldom,
24 like I said, looked at them.

25 Q. Can I ask you in your general

1 experience, is this a way that probationers who put
2 in time on community service were credited with
3 that time?

4 A. Yes.

5 Q. And who would fill in the seven, seven,
6 I assume those are hours?

7 A. Right. I have no idea who was doing it
8 at the time, but it's a random pick, it's whoever
9 comes through the line. You're assigned to
10 supervisors and your time would be marked down,
11 seven hours according to that date, next to the
12 name.

13 Q. You can't tell from this where the
14 person was putting in his time?

15 A. No, sir.

16 Q. Is there anywhere to tell where a
17 probationer was putting in time, any form?

18 A. Not that I'm aware of.

19 Q. Okay. Now under notes you'll see
20 something, the first person Marquita Abernathy, it
21 says VOA?

22 A. Volunteers of America.

23 Q. What's that refer to?

24 A. People under light duty would be
25 assigned to those, usually a sit-down job, and I

1 don't know what they did. VOA, we call it light
2 duty assignments.

3 Q. That would be somebody that was not
4 supposed to go out and do heavier --

5 A. If they had a restriction, maybe
6 lifting, maybe could have a heart problem.

7 Q. So it would be a medical --

8 A. Health issue, medical issue.

9 Q. Okay. And they would go to a -- there
10 was a sit-down job of some kind, Volunteers of
11 America?

12 A. I don't know if it was specifically
13 sit-down. I know it was for light duty.

14 Q. Do you know what AWC is, about
15 two-thirds of the way down?

16 A. Approach with caution.

17 Q. Really?

18 A. I shouldn't say that because I'm not
19 sure.

20 Q. That's a note that somebody put on
21 there?

22 A. It's printed on there. It's not
23 handwritten, it's typed.

24 Q. Approach with caution, and yet the
25 person was still out doing his probation?

1 A. Yes, sir.

2 Q. It sounds like a warning of some kind
3 to whoever is supervising?

4 A. It could be. That's the first I saw it
5 on this sheet. I seldom saw these before.

6 Q. So you would be out with somebody, you
7 wouldn't know if there was an approach with caution
8 note on there?

9 A. I don't remember.

10 Q. Okay. On page four, I just -- I don't
11 know whether any of these have any importance, but
12 just for my own information at least, I see an EMU
13 a couple of places. Do you know what that means?

A. Electric monitoring unit.

15 MR. STEVENSON: It's actually
16 electronic.

17 BY MR. FELSON:

18 Q. And that was the person that had
19 something on his leg or something like that?

A. Yes, sir.

21 Q. Okay. Let's go on to Number 2, and
22 again, that's the original. You can just leave
23 that there, and let me see if I have one each
24 marked and now here we have, oh, a community
25 service roster. The first page looks like the

1 others. Oh, clerical crew, what does that mean?
2 That's why I separated them. Any idea?

3 A. I'm assuming they'd be sent to the
4 office to help file.

5 Q. The law library down here?

6 A. Yeah.

7 Q. For whatever reasons, these are people
8 that are not out on a work crew; would you agree
9 with that?

10 MR. STEVENSON: I'm going to
11 object. You mean not outside on a work crew?

12 MR. FELSON: Maybe so, yeah.

13 Well, the word clerical, I'm sure you know exactly.
14 Why don't you tell me.

15 MR. STEVENSON: You know, Steve,
16 my objection to this document is foundational with
17 respect to him. If you know the answer to the
18 question, Jeff, answer the question.

19 MR. FELSON: No, no, no. Let's
20 move on. That's good enough for me.

21 BY MR. FELSON:

22 Q. Let's take a quick look at Number 3.
23 Now, you should have something in front of you
24 that's got handwritten 10-10-00, Tuesday, on it and
25 community service program typewritten. Do you have

1 that?

2 A. It's handwritten, it's not typed.

3 Q. The date is handwritten, correct?

4 A. Correct.

5 Q. And it's captioned community service
6 program, correct?

7 A. Yes.

8 Q. Now, it says weekday locations. Do you
9 know this form at all?

10 A. Again, I never did this part of the
11 paperwork.

12 Q. Okay. Have you seen this form before?

13 A. Yes.

14 Q. Do you know what it's for? Weekday
15 locations, it says, but I'm just trying to get a
16 handle on what it's about.

17 A. Distribution, number of people going to
18 each supervisor for community service.

19 Q. Okay. Is your name on here? Is that
20 you, JS, one of the JS's?

21 A. Yes, it would have to be.

22 Q. Okay. There's a second JS with a small
23 S. Any idea what that was?

24 A. Another supervisor with the same
25 initials.

1 Q. So these look like, across the top,
2 initials of supervisors?

3 A. Yes, sir.

4 Q. And would this be, would this be some
5 kind of a form that would tell somebody which
6 probationers are going with which supervisor or do
7 I have that wrong?

8 A. Yes, sir.

9 | Q. That's correct?

10 A. Yes, sir.

11 Q. And you'll see on the third page, they
12 are not paginated, but the third page says
13 Wednesday it's got a different name. Under your
14 initials, the first one had Morgan and Huffman or
15 something like that, and suddenly we have second
16 date, Terrance Woods. So that would be who you
17 would be going out with on the second day, on the
18 Wednesday?

A. Who were the names again?

20 MR. STEVENSON: Steve I'm going to
21 object.

22 MR. FELSON: Just one point. Let
23 me get through this and we'll be done.

24 BY MR. FELSON:

8. This was not given to you to tell you

1 who you went out with. Somebody else used this and
2 assigned people to your crew; is that correct?

3 A. I would get a list of the people.

4 They'd write it out each day who you got.

5 Q. But it wouldn't be on this form?

6 A. No, sir.

7 Q. It would be a blank piece of paper, and
8 they'd tell you who you have, your people with you?

9 A. Yes, sir.

10 MR. FELSON: That's all I have.

11 MR. STEVENSON: Jeff, I have just
12 a couple of follow-up questions.

13 CROSS EXAMINATION

14 BY MR. STEVENSON:

15 Q. When you went to the homeless sites
16 that Mr. Felson was talking to you about during the
17 several times that you went to those, did you ever
18 find people there?

19 A. Yes.

20 Q. All right. When you found people
21 there, were they given an opportunity to remove
22 items of value?

23 A. As far as I can remember.

24 Q. Okay. Now, during your employment as a
25 community supervisor, community service supervisor,

1 were items of value ever brought to you?

2 A. From the sweeps?

3 Q. Not from the sweeps. Ever?

4 A. Oh, yes, yes, quite often actually.

5 Q. What do you do with items of value that
6 are brought to you?

7 A. Let's say, for example, if it's in the
8 city, in the District One region within their
9 jurisdiction, you take it to the local district,
10 the local municipality, whether it be Colerain
11 Township, the jurisdiction, the Highway Patrol's
12 jurisdiction. You return it to their jurisdiction.

13 Q. So this was not an infrequent
14 occurrence that items of value would be brought to
15 you?

16 A. No.

17 Q. All right. When you went to the City
18 of Cincinnati homeless sites, I believe you
19 indicated that you sat in the van?

20 A. As far as I can remember, yes, sir.

21 Q. All right. And the actual cleanup was
22 going -- let's use the Fifth Street viaduct for an
23 example -- the actual clean up is occurring at some
24 location away from the van; is that correct?

25 A. Yes, sir.

1 Q. And can you give us an estimate about
2 how far away from the van this was happening?

3 A. 10, 12, 15 feet.

4 Q. Did you have any conversations with the
5 police officer during the cleanup taking place?

6 A. Not that I recollect.

7 Q. Were you ever able to observe any
8 conversations between the police officer and the
9 probationers?

10 A. He would give them the directive. The
11 police officer would give them directive on what
12 needs to be done at the locations.

13 Q. All right. Were you ever -- strike
14 that. When the cleanup was finished, what
15 happened?

16 A. If it was the end of the day, we would
17 bring the probationers back to the Justice Center
18 and drop them off.

19 Q. Did the police officer stay at the
20 location when you were done?

21 A. I don't remember.

22 Q. All right. Do you have any
23 recollection of whether any of your probationers
24 would have brought items of value to the police
25 officer?

1 A. No, sir, I don't.

2 Q. Okay. Were you present and did you
3 listen to instructions being given the probationers
4 by the police officers?

5 A. I was present, but not always
6 listening.

7 MR. STEVENSON: All right.

8 Nothing else.

9 REDIRECT EXAMINATION

10 BY MR. GANULIN:

11 Q. One follow-up. You were sitting in a
12 van you said 12, 15 feet away from where the clean
13 up was occurring. Were the windows rolled down in
14 your van in October?

15 A. I don't remember. I would probably
16 have them down winter, spring, summer, or fall.

17 Q. But as you're testifying today, do you
18 specifically remember Police Officer Branigan
19 giving verbal orders to probationers?

20 A. At every site they would have to give
21 them some sort of order, the policeman.

22 Q. Do you remember how long the cleanup
23 took at that --

24 A. Absolutely not.

25 Q. But your testimony today, you can

1 remember now, do you remember what Police Officer
2 Branigan said?

3 A. No, sir, I told you that.

4 Q. But you observed him speaking to the
5 probationers?

6 A. Yes. They would have to have some sort
7 of directive on what to do by the policeman.

8 Q. Are you saying that perhaps he spoke to
9 them once?

10 A. I don't remember.

11 Q. You don't know how many times he spoke
12 to them?

13 A. Not at all.

14 Q. Are you basically assuming he spoke to
15 them at least once?

16 A. Yes. He would have to give them a
17 directive to do -- I always tell the probationers
18 to do what the policeman tells them.

19 Q. You directed them to go to the
20 policeman --

21 A. Usually we follow the policeman to the
22 site and they would follow the directive of the
23 police officer.

24 Q. And do you recall specifically that's
25 what occurred for this site beneath the Fifth

1 Street viaduct west of Central in October of 2001.

2 A. Do I specifically? No.

3 Q. Okay. That's fine. I thought that's
4 what you were responding to Mr. Stevenson about.
5 That's fine. Nothing else.

6 RECROSS EXAMINATION

7 BY MR. FELSON:

8 Q. I have one more item to ask here which
9 we haven't really discussed. While these cleanups
10 were taking place, there was hauling away of what
11 was cleaned up, correct, in some fashion either
12 after or during? What was the usual custom for
13 getting the stuff, taking the stuff away, or did
14 you have any connection with that?

15 A. There would be a truck there, whether
16 it's pickup trucks, garbage trucks, and they would
17 bag things and haul it away, toss it into the
18 truck.

19 Q. Would they be waiting while the cleanup
20 was taking place or called in afterwards, if you
21 recall?

22 A. I don't remember.

23 Q. On occasion would you see a sanitation
24 truck or a pickup truck while you were there?

25 A. Yes, there would have been, to haul the

1 stuff away.

2 Q. Theoretically they could wait until
3 it's done and call them when it's done later. You
4 recall them being there?

5 A. Yes.

6 Q. You mentioned bags. The probationers
7 were supplied with large garbage bags?

8 A. Yes, sir.

9 Q. And that's what they used to throw
10 things into?

11 A. Yes, sir.

12 Q. And they tie them up and put them down
13 or haul them to the truck? Somebody would haul
14 them to the truck?

15 A. The truck, yes.

16 Q. Would that be the probationers?

17 A. Yes.

18 Q. And you saw that happen on occasion,
19 correct?

20 A. Yes.

21 MR. FELSON: Now you never saw --
22 no, no, withdraw that. Okay, nothing further.

23 RECROSS EXAMINATION

24 BY MR. STEVENSON:

25 Q. I have one follow-up. Do your

1 probationers wear orange jumpsuits when they do
2 this work?

A. Absolutely not.

4 MR. STEVENSON: All right. Okay.

5 We're done. We want signature.

6 (Concluded at 10:01 a.m.)

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JEFFREY A. SMITH

C E R T I F I C A T E

STATE OF OHIO
SS:
COUNTY OF MONTGOMERY

I, LISA K. KELLER, the undersigned, a
7 Registered Reporter, Certified and Notary Public
8 within and for the State of Ohio, do hereby certify
9 that before the giving of aforesaid deposition said
10 JEFFREY A. SMITH, was by me first duly sworn to
11 state the truth, the whole truth, and nothing but
12 the truth; that the foregoing is the deposition
13 given at said time and place by said JEFFREY A.
14 SMITH; that said deposition was taken in stenotypy
15 by the court reporter and transcribed into
16 typewriting under her supervision; that said
transcribed deposition was submitted to the witness
for his examination; the court reporter was neither
a relative of nor attorney for any of the parties
to this case nor relative of nor employee for any
of the counsel; neither the court reporter nor the
affiliated court reporting firm has a financial
interest under a contract as defined in Civil Rule
28(D).

17 IN WITNESS WHEREOF, I hereunto set my
hand and official seal of office this 16th day of
18 June, 2006.

LISA K. KELLER
Notary Public, State of Ohio
My Commission Expires 11-7-08

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